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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,095	03/13/2001	Gijsbert Joseph Van Den Enden	PHN 17,554	1084

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER	
AGUSTIN, PETER VINCENT	

ART UNIT	PAPER NUMBER
2652	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/787,095	**Applicant(s)** VAN DEN ENDEN, GIJSBERT JOSEPH
	Examiner P. Agustin	**Art Unit** 2652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-20*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 3. NOTE: The addition of claim 21 raises new issues that would require further consideration and search.

Continuation of 11. does NOT place the application in condition for allowance because:

The Applicant's arguments filed February 24, 2006 have been fully considered but they are not persuasive.

(1) On page 5, paragraph 3, the Applicant declines to make the changes suggested by the Examiner, i.e., on claim 7, line 6, "to be a measured" should be --in response to the measured--, because the recitation is allegedly not vague or indefinite and particularly points out the subject matter of the invention. The Examiner disagrees. Claim 7, in its present form, is not supported by the specification. There is no disclosure of "controlling the power of the laser diode to be a measured value of the reflection". Page 2, lines 7-8 of the specification recite that "the measured value is used for controlling the power of the laser diode", which is very different from what is claimed and which recitation does not even suggest "controlling the power of the laser diode to be a measyre value of the reflection". In light of the Applicant's disclosure and based on the Examiner's best judgment, this has been perceived as a minor informality, and a mere objection was made.

(2) On page 6, paragraph 3, thru page 10 paragraph 1, the Applicant presents the same arguments presented on page 6, paragraph 5 thru page 10, paragraph 1 of the reply filed October 10, 2005. The Examiner disagrees with these arguments for the same reasons presented on item 11 of the Final Office Action mailed November 30, 2005.

(3) On page 10, paragraph 3, the Applicant points out that the statement that "Claims 2-5 and 8-20 are dependent upon rejected base claims" is unclear and requests clarification and indication whether these are additional rejections. In response, the following example is provided. Claim 2 is dependent upon claim 1, which means that claim 2 includes all limitations of claim 1. While claim 2 has been rejected because it is not disclosed how the function of measuring reflection at spots where a piece already in a highly reflective state is overwritten with a highly reflecting state (as recited in claim 2) is achieved, claim 2 is also rejected because it is not disclosed how the function of measuring reflection from the spot of only one of the states and using a measured value of the reflection for controlling the power of the laser diode for writing both states (as recited in claim 1 from which claim 2 depends) is achieved.

(4) On page 10, paragraph 4, the Applicant points out that while claim 3 is listed under the 112, 1st paragraph rejection, there is nothing within the Final Office Action that relates to claim 3. The Examiner disagrees. Page 3, last line of the Final Office Action states that "Claims 2-5 & 8-20 are dependent upon rejected base claims", e.g., claim 3 is dependent upon claim 1, which means that claim 3 includes all limitations of claim 1. Claim 3 is rejected because it is not disclosed how the function of measuring reflection from the spot of only one of the states and using a measured value of the reflection for controlling the power of the laser diode for writing both states (as recited in claim 1 from which claim 3 depends) is achieved.

(5) On page 10, paragraph 5 thru page 14, paragraph 4, the Applicant presents the same arguments presented on page 10, paragraph 2 thru page 13, paragraph 2 of the reply filed October 10, 2005. The Examiner disagrees with these arguments for the same reasons presented on item 11 of the Final Office Action mailed November 30, 2005.

(6) The Applicant argues on page 14, paragraph 1 that the combination of Aoki with Johann et al. is an improper combination, additionally alleging on paragraph 2 that "this modification would render Aoki unsatisfactory for its intended purpose". Since this is a mere allegation without evidentiary support, this argument is not found persuasive.

(7) The Applicant argues on page 14, paragraph 2 that there is no reasonable expectation of success within the references, as required for a prima facie case of obviousness for the combination of Aoki and Johann et al. The Examiner disagrees. As noted on page 7, paragraph 4 of the Final Office Action, at the time of invention by the Applicant, it was well known to use either a DC level detector (taught by Aoki) or a signal peak detector (taught by Johann et al.) for the same purpose of measuring reflected light; therefore, one of ordinary skill in the art would have recognized that either techniques are obvious variants of each other, and therefore, there is a reasonable expectation of success within the references.

(8) The Applicant argues on page 14, paragraph 3 that replacing the DC level of the bias radiation as taught by Aoki with the peak detector of Johann et al. would clearly change the principle of operation of Aoki so modified, and therefore, there is no suggestion to make the combination of Aoki and Johann et al. The Examiner disagrees. As noted on page 7, paragraph 4 of the Final Office Action, at the time of invention by the Applicant, it was well known to use either a DC level detector (taught by Aoki) or a signal peak detector (taught by Johann et al.) for the same purpose of measuring reflected light; therefore, one of ordinary skill in the art would have recognized that either techniques are obvious variants of each other, and therefore, the combination of Aoki and Johann et al. is deemed proper.